



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Mark R. Wisner
Wisner & Associates
1177 West Loop South Suite 400
Houston, TX 77027-9012

COPY MAILED

SEP 01 2006

OFFICE OF PETITIONS

In re Application of	:	
Ilyas Juzer Najmuddin	:	
Application No. 10/081,090	:	ON PETITION
Filed: February 22, 2002	:	
Attorney Docket No. 94.0048	:	

This is a decision on the request to restart the time for payment of the issue fee filed by on March 3, 2006, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment, or in the alternative, a petition under 37 CFR 1.137(b) to revive the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

As to the petition under 37 CFR 1.181, petitioner argues that the Notice of Allowance and Fee(s) Due/Notice of Allowability mailed December 14, 2004, was received in an envelope bearing a postmark date of December 17, 2004. Petitioner also argues that the envelope was not received until thirteen months after it was mailed.

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. A statement from practitioner stating that the Office action was not received by the practitioner;

2. A statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. A copy of the docket record where the nonreceived Office action would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy items (2) and (3) of the above-stated requirements.

Accordingly, absent the required evidence to establish nonreceipt of the Notice of Allowance and Fee(s) Due/Notice of Allowability mailed December 14, 2004, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,500 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

As to the petition under 37 CFR 1.137(b), a grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

The Office hereby acknowledges receipt of \$1,400 for payment of the issue fee, and \$300 for payment of the publication fee submitted on March 3, 2006. The Office also acknowledges receipt of an authorization to charge \$1,500 for the petition fee to the deposit account listed in the instant petition. However, there is no indication that corrected formal drawings as required by the Notice of Allowability mailed December 17, 2004 have been submitted. Consequently, this application cannot be treated as a petition to revive under 37 CFR 1.137(b) until corrected formal drawings have been submitted.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181, or in the alternative, a Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

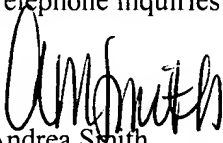
Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.


Andrea Smith
Petitions Examiner
Office of Petitions